## SANTA YNEZ BAND OF MISSION INDIANS Tribal Elders Council

April 6, 2017

## Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

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Streamlining Deployment of Small Cell	)	WT Docket No. 16-42
Infrastructure by Improving Wireless	)	
Facilities Siting Policies;	)	
Mobilitie, LLC Petition for	)	
Declaratory Ruling	)	

COMMENTS OF \_Santa Ynez Band of Chumash Indians

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The Santa Ynez Band of Chumash Indians (SYBCI) is located Santa Ynez, Calif.. The SYBCI works with a variety of federal agencies on small and large projects in the compliance of federal laws, including but not limited to the National Historic Preservation Act (NHPA) [and the Native American Graves Protection and Repatriation Act (NAGPRA) and any others – ARPA, NEPA]. Our tribe protects irreplaceable sites and locations that are of religious and cultural significance to our people today by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers.

The Federal Communications Commission's Tower Construction Notification System (TCNS) system has proven to be a very useful tool to track, monitor, and expedite the placement of cellular technology infrastructure. Since its inception, the SYBCI has worked with and developed quality relationships with the many consultants installing telecommunication infrastructure facilities, including cell tower citing, through the TCNS Program. Our tribe provides prompt response to cell tower notifications. If and when any situations arise using the TCNS Program, tribes have been able to promptly contact industry consultants and/or FCC staff to expedite resolutions. With the emerging 5G technology by the wireless telecommunications industry we can see the benefits of modernizing the existing TCNS system to meet our needs. Though technically, the SYBCI, a Tribal Sovereign Nation is not a local government for the purposes of this rulemaking, Indian tribes face many of the same challenges that have described in the Public Notice and which the telecommunications industry has mentioned as a concern to their interests.

The SYBCI would like to address some of the questions raised by the telecommunications industry Docket 16-421:

There have been no discoveries or impacts as a result of industry activities, why do we need to continue with review and research by Tribes? That may be what industry sees, but the reason for this and the lack of discovery is because Tribes have been able to be involved with this process and share our knowledge as to where cultural/heritage sites are located and have been able to share that info with the applicant/agent and have the proposed location moved or redesigned to avoid or lesson the impacts.

That is the reason why there has been no adverse affects or discoveries. The Tribes have been included early on in the process, unlike previously, where our Tribe has identified locations where these towers have been placed and have caused damage and eliminated our site.

The process that the FCC has created with the TCNS system has been invaluable and will continue to be as long as industry and Tribes continue to use it. Although as technology changes, so will TCNS need to adapt, but it will still be valuable asset to all concerned.

<u>What is a reasonable period of time?</u> There have been issues with the manner in which tribes respond to there request for information. Some of the issues that make it a little difficult for Tribes to respond to these notices in a timely manner is how their Governmental processes are laid out.

When notices are received through the TCNS system, the person responsible for accessing that information may or may be the same person who will be doing the research. Once the research is complete and a comment or information is to be released to the requesting applicant/agent that info may need to be vetted or approved by a committee or council for the purpose of protecting the Tribes interest, since most of info is confidential and sensitive to the tribe.

Other circumstances that also hold up the process is the lack of information received by the applicant/agent requesting the information, i.e. supporting documents, cultural studies, drawing, correct address (not just GPS readings). All of these issues affect response time.

Is there a simple solution to this problem, no, but it is able to be improved and that will come from both working together, maybe even forming agreements, whether that be in form of an MOA, MOU, or the sort.

As a tribe that is involved in development and economic growth, we understand deadlines and bottom lines, but we also understand that there are cost of doing business and we work within those struggles and with our partners to improve the process.

<u>What activities would improve the amount of time needed?</u> In order to improve the time needed to adequately research these notice for tower installations, all information needs to be delivered to the tribes. TCNS 621 &623 forms need to have complete information for tribes to respond.

On the tribal side, those directly involved in the researching of this and those approving that information need to set guidelines on what needs approval and what can be sent without approval.

The needs for applicants/agents establish MOA/MOU documents on these issues and have what if & enforcement clauses with real actions.

<u>Shot clock and Enforcement?</u> I believe with the previous statements and recommendations in place, response to these notices and recommendations would be much quicker and the shot clock & enforcement may never come into play.

<u>What is a small cell?</u> Tribes need a definitive answer as to what a small cell is. Is a cell that will be mounted on building, existing power or light pole, or will it be a stand alone.

## Review small cells the same way as review of macrocells (including costs associated with review)?

How will small cells be installed in rural areas, where there are no structures? How big is the footprint? Will these all be installed in ROWs or on leased lands? How many will be needed to adequately accommodate a viable signal?

I believe that these are the questions that will need to be answered first, in order to give any kind of answer, but I do believe that cost & review will be determine by the amount of work that will be preformed in order accomplish its placement.

No ground disturbance, mounted on buildings, existing light standard & power poles may not need any review, with minimal or no additional cost associated. That would vary between tribes, but like mentioned previously, these issues could be worked out in an MOA/MOU.

Tribes are not here to impede progress, just to protect our cultural/heritage interest.

<u>Use batching? If batching already being used/reviewed, how is it working? Do you charge the same for a batch as for a tower?</u> The problem with batching is that we receive a number of propose locations under 1 TCNS number that may be spread out over a great distance. With regards to cost, we then need to look at each on and determine which ones have ground disturbance, are in an area that we have already determined to be sensitive, and which ones that we don't need to do anything on.

The cost in the case of batching could be much higher per TCNS notice, the cost per location within the notice and circumstance surrounding those locations would determine the final total cost.

Here again, these cost could go back to the MOA/MOU that the applicant/agent has established with the tribe.

<u>Fees – what are your fees based on? Actual costs?</u> This is another issue that could be established between the applicant/agent within an MOA/MOU. A flat rate, w/contingencies or a rate schedule that would include all activities needed to be completed by the tribe to address the notice.

Each activity could have an agreed to amount, so that there would be no surprises and that an actual cost/invoice would be produced to satisfy all parties involved.

<u>Do you demand payment upfront and why?</u> Because our tribe works on an hourly basis and not a flat rate, we do not require an up front payment. I understand tribes that do, already understand their cost and can request that. I can see this becoming a concern for an applicant, because they don't know what they will get for that fee, if anything at all. This is where an MOA/MOU between tribes and applicant/agent would go along way.

What Tribal guidelines/ordinances on reviewing process? Do these have to be updated? All these can be laid out in an MOA/MOU what ifs.

<u>Would you like to have an individual agreement with a carrier or 3<sup>rd</sup> party consultant?</u> We believe that this would be beneficial to all parties, because we would know what to expect from one another and no surprises.

<u>Do you support use of public ROWs for infrastructure facilities deployment?</u> Yes we do, but it doesn't negate the fact that any notices would not be subject to research and review.

SYBCI would like to make this statement for the record and that is this, we understand that there has been an issue with costs and delays involved with the review and research process of TCNS notices that resulted in delayed deployment and installation on the Tribes part.

But to be fair, tribes have made some errors in the way that they handled these notices, but also there have been just as many errors on behalf of the applicant/agent, but lets get beyond that work towards a process that will work for all involved to achieve the goals and mission of all side involved.

As technology moves forward, new issues will evolve, but we believe that if work together now and put some of these thoughts into practice, we can move forward together. Another thought that might help with these issues, is that the industry and tribes form a working group that deals with these issues, so that we don't waste time and resources in opposition to each others goals and needs.

Sincerely,

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